IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

WRIT PETITION NO.42130 OF 2006

G. Vani .. Petitioner

Vs.

The Registrar,
High Court,
Chennai. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondent to pay the pension benefits with interest at 12% per annum from 8.8.2000 onwards to the petitioner.

For Petitioner : Mr.R. Subramanian

For Respondent : Mr.L.S.M. Hasan Fizal
Government Advocate

O R D E R

(Order of the Court was made by P.K. MISRA, J)

Heard Mr.R. Subramanian for the Petitioner and Mr.L.S.M. Hasan Fizal, Government Advocate, for the Respondent.

2. The question in this writ petition relates to payment of pension to the family members of the deceased employee, who was working in the State Judiciary. During his tenure in service, a disciplinary proceedings had been initiated and some of the charges against him had been found to be proved. Ultimately, the High Court on its administrative side passed an order of removal from service. Such order of removal was challenged by the Officer concerned by filing W.P.No.1832 of 1986. During

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pendeny of such writ petition, the officer expired on 17.12.1995 and the legal representatives were brought on record. Subsequently, by order dated 17.3.1999, the High Court in its judicial side had observed that no order of removal could have been passed by the High Court on its administrative side as the order could have been passed only by the appointing authority, namely, the Governor. Thus, setting aside the order of removal from service, the High Court remitted the matter to the High Court in its administrative side to consider as to what further action has to be taken in the disciplinary proceedings. Thereafter, the High Court in its administrative side, passed an order on 8.8.2000 to the following effect :

> "(8) Accordingly it is ordered as follows :-
>
> (i) The period of suspension of Thiru V. Ganapathy, formerly Sub Judge, Nagapattinam, now expired, shall be deemed to have continued upto the date of his retirement i.e. 31.3.91 had he been continued in service.
>
> (ii) The period from 14.10.77 the date on which he was placed under suspension, till 31.3.91, the date of his superannuation, is treated as SUSPENSION and he be deemed to have retired from service on 31.3.91 A.N. on attaining the age of superannuation.
>
> (iii) Thiru.V. Ganapathi, formerly Sub Judge, Nagapattinam now expired is entitled for all eligible retiral and pensionary benefits and now since he is not alive, the legal heirs of the said deceased officer are entitled to receive those benefits."

2.1 Thereafter, the legal representatives of the deceased employee filed W.P.No.4735 of 2001. The writ petition was dismissed by observing :-

> "3. The action so taken safeguards the right of the family of the deceased to receive such pensionary benefits as the deceased would have been entitled to as he has been deemed to have been retired from service on 31/03/1991 on attaining the age of superannuation. The resolution made it abundantly clear by stating that "in view of the above it is further resolved that officer is entitled for all eligible retiral and pensionary benefits and now since he is not alive, the legal heirs of the officer are entitled to receive those benefits".
>
> 4. Counsel however contends that though the family does not make any claim for any arrears of salary nor they are interested in claiming that the deceased should be treated as in service till the date of his retirement, they are concerned about that part of the resolution which says that he shall be deemed to have been kept under suspension till the date of retirement.

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5. Counsel says that the word suspension casts stigma. We do not see any substance in the complaint made. The petitioner is merely fighting an imaginary ghost. The resolution passed in the manner it has been done, is only intended to enable the family to receive the pensionary benefits and the order deeming him to be under suspension and putting that suspension to an end on the date of his superannuation was only meant to protect the retiral benefits which will accrue by treating him as having retired on 31/3/1991. Admittedly, during the period from the date of suspension till the date of retirement, he had not worked. During his life time he must have received the subsistence allowance so long as the period of suspension continued. We find no merit in the petition."

2.2 Subsequently, since the matter relating to payment of pension had not been finalised for a long period, the family members of the deceased employee have filed the present writ petition for a direction directing the respondent to pay family pension with 12% interest. During pendency of such writ petition, it appears that by order dated 1.12.2006, pension appears to have been fixed at Rs.678/- per month. However, it is stated by the counsel for the respondent that thereafter the petitioner has not approached the Office to complete other formalities. In course of hearing, learned counsel for the respondent on instructions further stated that, while calculating the pension payable, the period during which the deceased employee was deemed to be under suspension has not been counted towards service.

3. In normal course, in the writ petition praying for issuing writ of mandamus, we would have simply disposed of the matter by observing that the petitioners can receive the amount under protest and challenge the order relating to calculation of pension. However, we find that the matter has remained pending for a long period, even though the officer concerned has died more than 18 years back and it would be travesty of justice if the matter would not be finalised at this stage.

4. Chapter VIII of the Fundamental Rules contains various provisions relating to Dismissal, Removal and Suspension. Rule 53 contains various provisions relating to payment of subsistence allowance during the period of suspension. Rule 54(1) envisages that (1) when a dismissed Government servant is reinstated as a result of appeal or review, the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid for the period of absence from the duty including the period of suspension preceding the order of dismissal and (2) whether or not the said period shall be treated as a period spent on duty.

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Rule 54-A, on the other hand, envisages consequences where the dismissal is set aside by a court of law. As per Rule 54-A, where dismissal is set aside by a court of law and the Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) of Rule 54-A. The above thing, however, is subject to the direction of the Court, if any.

Under Rule 54-A.(2), if the dismissal is set aside on the ground of non-compliance of Article 311(2) of the Constitution and the Government servant is not exonerated on merits, such person shall be paid such amount as would be determined by the competent authority. Under Rule 54-A(3), if the dismissal is set aside by the court on merit, such person shall be paid the entire amount which he would have received but for the order of dismissal and such period is required to be treated as duty for all purposes.

5. Rule 54-B-1(1),(2) and(3) being relevant, are extracted in extenso:

> "54-B-1.(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation or compulsory retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order-
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation or compulsory retirement, as the case may be; and
>
> (b) whether or not the said period shall be treated as a period spent on duty.
>
> (2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

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(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine."

6. Learned counsel for the petitioner has contended that, in view of Rule 54-B-1(2) of the Fundamental Rules, since the disciplinary proceedings had not been concluded and the officer concerned died before such disciplinary proceedings, the family members were entitled to full pay and allowances for that period to which the employee would have been entitled had he had not been suspended, subject to adjustment of subsistence allowance already paid. In this context, learned counsel for the petitioner submitted that even though as per Rule 54-B(2) entire salary should have been paid, in view of the earlier decision of the High Court, obviously such amount has not been paid. However, that does not mean that the entire period should not be counted for the purpose of calculating pension. Learned counsel for the petitioner further submitted that as a matter of fact on a reading of the decision of the Division Bench in WP.No.4735 of 2001, it would be apparent that the court actually intended that the persons concerned would be entitled to receive the entire pension and the only thing is that they would be deprived of the salary for that period.

7. We find sufficient force in the above submissions. A departmental proceeding is deemed to be pending until it culminates in imposition of punishment or exoneration, as the case may be. Obviously such order of punishment or exoneration has to be passed by a competent authority. Since the order of punishment was found to be invalid having been passed by an authority not competent to pass such order, it must be taken that such order of punishment was non est in the eye of law. [In this connection, reference can be made to the decision of the Supreme Court in AIR 1976 SC 1899 (BARADAKANTA MISHRA v. HIGH COURT OF ORISSA AND ANOTHER)]. Thus, it must be taken that the departmental proceedings had not been finalised during the life time of the concerned officer. Rule 54-B-1(2) is a specific provision applicable to such a case.

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8. Having regard to the facts and circumstances of the case, we feel interest of justice would be served by disposing of the writ petition in the following manner :-

(i) During the period in which the petitioner was suspended till his deemed date of retirement i.e., 31.3.1991, no salary would be payable. However, such entire period has to be taken into account for the purpose of calculating pension and other retirement benefits.

(ii) The respondent is to recalculate the pension payable by taking into account the entire period as the part of service and finalise the matter relating to payment of pension as expeditiously as possible preferably within a period of four months from the date of receipt of this order.

9. With the above directions, the writ petition is disposed of. No costs.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar General,
   High Court, Madras.

2. The Special Officer (Liaison),
   High Court, Madras

+1 cc to Mr.R.Subramanian, Advocate Sr.No.72908.

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